YEE HOONG LOONG CORPN. SDN. BHD.

v.

KWONG FOOK SENG CO.

HIGH COURT, IPOH
DATO' PEH SWEE CHIN SCJ
[ORIGINATING SUMMONS NO. 24-121 OF 1991]
31 JULY 1992

ARBITRATION: Interim award - quantum meruit - Sections 24(d) and 66 Contracts Act 1950 - Compensation or restoration - Quasi contract.

This is an appeal against the decision of an arbitrator concerning an interim award made against the appellant (a developer) on a question of law, that is, whether the finding of illegality by the arbitrator precludes the respondent (a contractor) from pursuing its alternative claim of *quantum merit* relying on an agreement dated 3 May 1987.

The parties at first applied for Bridging Finance facilities on a Building Contract for RM5.3 million. As this was rejected by the banks, another Building Contract was drawn up. Releases were based on percentages of work done. The arbitrator considered the contract sum of RM7.799 million to be inflated somewhat and opined that, based on the evidence available the parties never intended to enforce the contract. As such, s. 24(d) of the Contracts Act. 1950 applied (where there involves or implies injury to the person or property of another) as the bank was influenced to release sums faster than it would otherwise do. Hence, it was held that the contract was unlawful and void. The arbitrator went on to say that the respondent can claim on quasi contract as s. 65 of the Contracts Act, 1950 provides for the provision of restoration to or compensation for a party who has given an advantage to the other party. Further under s. 37 of the Specific Relief Act, 1950 the court may require the party to whom relief is given to make compensation to the other.

The question before the court was whether the arbitrator exercised his discretion correctly in refusing to state a special case.

Held:

[1] In order to so state a case three conditions must be fulfilled. They are, first, that the point of law must be real and substantial; secondly, the point of law should be capable of being accurately stated and thirdly that the point of law is important for the equitable determination of the case.

[2] Under s. 66 of the Contracts Act, 1950 a court may order reasonable compensation for any benefit obtained and given under a void contract provided that both parties or the party so wronged did not know at the time of contract that it was not valid.

[3] The arbitrator was right to base the compensation on quantum meruit but the legal reason was wrong.

[4] The question did not involve a point of law the resolution of which was necessary for the determination of the arbitration case.

[Application dismissed with costs.]

Cases referred to:
Halfdan Grieg & Co. v. Sterling Coal & Navigation Corp. [1973] 2 All ER 1073 (refd)
Way v. Latilla [1937] 3 All ER 759 (HL) (refd)
Craven-Gills v. Canons Ltd. [1936] 2 KB 403 (refd)
Meneka v. Lum Kum Chun [1977] 1 MLJ 91 (refd)

Legislation referred to:
Contracts Acts 1950, ss. 24, 66

For the appellant - Chan Kok Keong; M/s. Chan & Associates; Ipoh
For the respondent - V.S. Viswanathan; M/s. Kean Chye & Sivalingam; Ipoh

JUDGMENT

Peh Swee Chin SCJ:

Two parties to an arbitration have been engaged in such arbitration before an Arbitrator commencing on 18 November 1989 and the hearing continued on various different dates until 19 November 1990 when the learned Arbitrator made his interim award. Before the learned Arbitrator the claimants have been Kwong Fook Seng Company, suing as a firm, and the defendant, Yee Hoong Loong Corpn. Sdn. Bhd. (the said parties are hereinafter called the contractors and developer respectively).

The developer employed the contractors in some housing scheme in respect of which dif-

ferences would appear to have arisen and they have been referred to arbitration.

The developer after the making of the interim award took out an originating summons before me for an order that the learned Arbitrator (Dato' Liew Whye Hone, Advocate and Solicitor) do state in the form of a special case for the decision of the Court the following question of law:

> Whether the finding of illegality by the Arbitrator precludes the Claimant from pursuing its alternative claim of *quantum meruit* relying on the agreement dated 3 May 1987.

The question of law cited above and stated by the learned Counsel for the developer appears to have been prompted by certain views explained by the learned Arbitrator in para 31 to para 34 of his interim award; the paragraphs are set out below for ease of reference:

> 31. I now come to consider the Bridging Finance facilities. The original application according to Mr. Lim of Ban Hin Lee Bank was based on a Building Contract for RM5.3 million. This was rejected by Mr. Lim as it cannot tally with the cash-flow submitted to him. Subsequently another Building Contract for RM7,799,000 was submitted to him. Loan is based on valuation by the Bank. But releases being based on work done is based on percentages of work done and therefore the higher the Contract sum the higher is each release. Hence the higher cost requirements shown in the cash-flow cannot be justified and obtainable by a Contract for RM5.3 million. The original of the RM5.3 million contract was never produced, but I have no strong reason to doubt the oral evidence of Mr. Lim.
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> 32. Considering all that I have stated and these are what I consider only relevant, I am inclined to believe that the Contract sum of RM7,799,000 is inflated somewhat. But above all considering the 9 certificates, non-payment demand in writing after the 9th Certificate and the manner in which the Building Contract was signed and the manner in which the sub-contracts were made and other dealings between the parties recorded in the documents and oral evidence I come to the inevitable conclusion that the Building Contract is not intended by the parties to be followed or enforceable. This leads to this Building Contract coming under s. 24 of the Contracts Act 1950 sub-section (d) involving or implying injury to the person or property of another, in this case the Bank influencing it to release sums faster than it would otherwise do. Hence the Contract is unlawful and void.
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> 33. What is the actual relationship between the parties, one would ask. To ascertain their true relationship is only an exercise in futility. Even the parties themselves do not have any clear cut idea of their relationship.
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> 34. I would therefore decide what is just and equitable. To argue that because there is no Building Contract there can be no claim on *quantum meruit* is not all that correct. The Claimant can claim on quasi-contract. Section 65 of the Contract Act 1950 binds any person who has received any advantage under the agreement or contract to restore to or make compensation for it to the person from whom he received it. Further under s. 37 of the Specific Relief Act 1950 the Court may require the party to whom the relief is granted to make any compensations to the other which justice may require. This I think codifies the equitable principle of unjust enrichment.

The learned Arbitrator refused to so state a special case as applied for by the developer before the former, who then applied for an order directing him to do so to the High Court.

The question before the Court was whether the learned Arbitrator had correctly exercised his discretion in so refusing. What are the principles or conditions which the learned Arbitrator ought to consider when he exercised such discretion?

In *Halfdan Grieg & Co. v. Sterling Coal & Navigation Corpn.* [1973] 2 All ER 1073, the Court of Appeal (Lord Denning, M.R., Megaw and Scarman LJJ) set out three conditions which have to be fulfilled before a similar request can be granted by an arbitrator. They are,

(1) that the point of law must be real and substantial;
(2) the point of law should be capable of being accurately stated as a point of law; and
(3) the point of law should be of such importance that the resolution of it is necessary for the proper determination of the case - as distinct from a side issue of little importance.

If he did not give any legal reason for doing so, what he had done could not possibly have attracted any serious objection from the developer for both parties had all along acted on the basis that the building contract was valid, or on

the belief that it was valid until the learned Arbitrator mentioned his legal ground for doing so.

The legal ground he mentioned was that because the price as stated in the building contract, had been inflated and other evidence, the whole building contract was void under s. 24 of the Contracts Act for causing injury to the property of the said bank. It has been seen the said bank had practically sought the inflated figure so as to tally with the said cash-flow, bearing in mind that the bank would earn more by lending more, not having been compelled by any social duty or other reason to do so, therefore, the real mischief was the inflated contract price, with which the value of the work done by the contractors could not be measured.

For what he did, that is, by not following the inflated contract price but on the basis of *quantum meruit*, a correct legal ground for the learned Arbitrator would have been that the contract price could not be RM7.799 million but value of work was to be assessed to be what he thought was fair from the evidence on *quantum meruit* to be awarded as an alternative to general damages and specific performance (if applicable) for breach of contract.

Or another legal ground would have been simply that the learned Arbitrator's assessment for value of work done by way of *quantum meruit* was just an incident of assessment of the value of work done.

Or another correct legal ground would have been that the clause in the building contract; fixing the price of RM7.799 million was a sham designed by both parties, and therefore the clause had never come into being by consensus and therefore on the basis it was non-existent, and there was no such a clause fixing the price; *quantum meruit* would be the proper and only remedy as already awarded by the learned Arbitrator, please see e.g. *Way v. Latilla* [1937] 3 All ER 759 (HL) in which the Court assessed and fixed reasonable remuneration for work done when it was not so fixed. In the same vein, the clause could have been declared by the learned Arbitrator as void as intended because it was fixed as required by the bank manager, in that case a Court could also order *quantum meruit*, see *Craven-Gills v. Canons Ltd.* [1936] 2 KB 403 in which *quantum meruit* was ordered in regard to a managing director's remuneration when it was found his appointment as managing director was void because he did not hold qualification share.

Again in any event, under s. 66 of the Contracts Act 1950, a Court can lawfully order reasonable compensation for any benefit obtained and given under a contract by any party when the contract is found to be void for any valid legal reason whatsoever provided that both parties, or the party seeking such reasonable compensation, did not know at the time of contract that it was not valid. Reasonable compensation would be the same in my opinion as *quantum meruit*, the latter expression being just a name of a remedy for reasonable compensation used in various contexts. In the leading case of *Meneka v. Lum Kum Chun* [1977] 1 MLJ 91, money was lent in the name of a partner of a firm of licensed moneylenders instead of the name of the said firm in breach of a provision in the Licensed Moneylenders Ordinance 1953. The Privy Council also held the transaction was illegal and since both parties believed it was valid when it was done, s. 66 of the Contracts Act 1950 applied and the Privy Council upheld the order to have the balance of the principal paid back to the moneylenders by the borrower.

Therefore what the learned Arbitrator did was proper or justifiably proper and correct e.g. by assessing the price for work done on the basis of *quantum meruit* but the legal reason was wrong. Should I have held him to his wrong legal ground and ignored the facts and situations revealed by the evidence and justice of the case that is, work and materials worth millions of dollars have been done and supplied respectively? I would no more hold a learned Counsel to a legal submission of his which happens to be wrong in deciding liability of a litigant or in deciding whether an Accused, should be made to walk up to his gallows.

I was of the view that the question of law would not be a point of law the resolution of which would be necessary for the determination of the arbitration case thus the developer before me did not fulfill condition No. 3 laid down in *Halfdan's* case. If the developer had his way, it could amount to a deprivation of the claimants of millions of dollars worth of work done for it, if such work could be proved.

I therefore dismissed the application of the developer that is, Yee Hoong Loong Corp. Sdn. Bhd. with costs.